

# Moving Towards Better Protection

Report from the special committee on the state of protection in Germany



Presented to the Bundestag by the Committee on Migration, Refugees and Integration  
reporting the activities and status  
of state administration in Germany

Report of the  
11th meeting



## **Moving Towards Better Protection**

### **Introduction**

**This report is based on the first eight months' operation of the Centre for Combating Ethnic Discrimination. The Norwegian authorities followed the recommendation of the European Commission against Racism and Intolerance (ECRI) and the Committee on the Elimination of Racial Discrimination (CERD) and established a national and special body to work in combating ethnic discrimination. The Centre was established by a royal decree as a public body in Council on 11 September 1998. Our main objective is protecting individuals who believe they have been discriminated against as well as documenting the nature and extent of ethnic discrimination.**

The Centre started registering enquiries as soon as the caseworkers were appointed in February 1999. At

1 October 1999 we have provided legal assistance in 145 cases. In addition the Centre has taken the initiative and highlighted special areas where discrimination is well known to be a problem.

This report provides information on the profile of cases handled during our first year of operation and outlines results that we have accomplished through activities implemented based on our initiative. The Centre has been given a very challenging task. This is based on three major functions.

### **The Centre's three major functions**

#### **Legal Assistance**

This is the Centre's main function. Our operational guidelines are found in The Courts Act Para.218, and summarised as follows:

- We give information on the rights of individual clients.
- We provide clients with a written opinion on their case.
- We help clients with complaints against decisions or procedures.
- We help clients make statements to the police.
- We guide clients to the right institution in cases where such institution is in a better position to help.
- In a case of major significance, the Centre may provide financial assistance to clients so that the case can be brought to trial.

The Centre regards cases to be of major significance when the judgement will provide clarity in an otherwise unclear legal situation, or result in development of the case law regarding discrimination.

## **Documentation Exercises**

Documenting instances of discrimination is supplementary to providing legal assistance and provides an overview of the extent of discrimination in Norway. We conduct four types of documentation exercises:

- ***Legal Assistance***

We maintain records of cases where the Centre has given legal assistance, along with a summary of the action taken in the case in question.

- ***Active gathering of information regarding discrimination***

It is difficult to get reports of discrimination in certain areas. In the autumn of 1999 the Centre initiated schemes to gather such information. The results of these will be published during year 2000.

- ***Co-operation with others***

We are a very young body. There are other organisations and government departments whose work involves ethnic minorities. They therefore have useful information and a high level of competence, which can be beneficial to our work.

- ***Individuals who report their experiences to us directly***

In certain cases, incidents cannot be pursued in a legal sense. The reason may be that the legal basis of the case is too weak, or that the client does not want the extra responsibility of pursuing a case. These cases are nevertheless useful to document, as they also represent problem areas that should not be ignored.

## **Influencing Developments**

Apart from using its resources to represent the interest of individuals faced with discrimination, the Centre will also direct its efforts at making the case for changing current legislation and improving inappropriate procedure.

## **How do we define "discrimination" in our work?**

There are no provisions in the current Norwegian law defining "ethnic discrimination". The three international conventions which were enacted under the Norwegian Human Rights Act on 21 May 1999 contain an anti-discrimination principle for the areas which come under the provisions of the convention. The Centre for Combating Ethnic Discrimination operates at a starting point with the definition given in the Centre's term of reference:

*"... negative unequal treatment based on beliefs, race, skin colour or national or ethnic origin".*

On the light of Norway's experience in connection with the Gender Equality Act, which entered into force in 1979, we specify our definition of discrimination on the ground of ethnicity as followed:

*" Unequal treatment of persons based on ethnic origin, religious conviction or skin colour. Unequal treatment also includes treatment, which in fact results in a person of a particular ethnic/national origin, skin colour or religious conviction being put, unreasonably, in a worse position than others."*

### **Will the Centre manage to uncover discrimination?**

The answer depends on whether one is speaking in legal terms or not. Discrimination usually happens in a covert way, hidden behind many words and actions. The discrimination element may not be obvious. From a legal position, to argue discrimination can seem ill fated while the situation for the individual, on the other hand, is often more clear.

An interesting question is whether the Centre actually needs to prove discrimination. In contrast to the duty imposed on many other watchdogs / Ombudsmen, the Centre is not required to contend that discrimination exists in order to pursue an action. The Centre's strategy is to pursue cases from the legal perspective that best suits the client. The question of whether or not there has been discrimination in an individual case can only be decided in court.

## **Statistical overview**

### **Division along gender lines**

Of the 145 cases handled by the Centre for Combating Ethnic Discrimination 104 (72%) involved male claimants and 41 (28%) female claimants. This does not mean that men are more vulnerable to discrimination than women. On the contrary, it may be regarded by the Centre as a sign that women who are the victims of discrimination are often not in a position to demand the assistance they require.

### **Geographical Location**

Statistics detailing the geographical location of those receiving help paints a lop-sided picture. The Greater Oslo area (Oslo/Akershus) represents 93 of the 145 cases handled by the Centre. See table below for further details.

<b>Location</b>	<b>Total Number of Cases</b>
Oslo/Akershus	93
Østlandet	20
Sørlandet	2
Vestlandet	12
Trøndelag	10
Nord-Norge	4

## **Ethnic/national origin of victims**

People using the Centre come from all over the world, but a significant proportion of cases is from people from the Middle East. It is worth mentioning that for the purpose of this report, the Middle East is also taken to include countries in North Africa, eg. Somalia. The table below contains further details.

<b>Ethnic/National Origin</b>	<b>Total Number of Cases</b>
Western Europe	17
Eastern Europe	15
USA & Canada	2?
Latin and South America	12
South and East Asia	17
Middle East	58
Sub Saharan Africa	23
Australia	2?

## **The categories in which discrimination is perpetrated**

<b>Category</b>	<b>Total Number of Cases</b>
Police	30
Customs	3

Health Services	7
Social Welfare & Benefits	22
Schools and Training	10
Aliens Department	18
Working Life	34
Hospitality/Nightlife	3
Housing	4
Other	14

The report written in Norwegian contains a brief summary of the 145 cases handled by the Centre between February and October.

## Chapter 1.

### The need for a better legal framework

**From the start of our operations it was clear that existing legal provisions for combating ethnic discrimination were inadequate. We have confirmed the fact that the existing law is inadequate during our attempts to pursue legal challenges to discrimination in practice. In October 1999 the Minister of Justice required the establishment of a committee, which will be working on a law against ethnic discrimination, and put forward recommendations by the end of 2000. This might come as a surprise to some people because many have the impression that Norwegian law already provides protection against discrimination. The Centre for Combating Ethnic Discrimination supports the Minister of Justice's initiative.**

An individual's protection against discrimination is dependent on the existence of effective mechanisms for combating discrimination. An effective legal framework – allowing for challenges to and punishment for acts of discrimination - plays a pivotal role in ensuring such protection. Basic surveys of the legal framework for combating discrimination in various European countries indicate that there are at least three different models.

Some countries such as the UK provide for a general law against discrimination, which is applied to all aspects of life, with a few exceptions. Swedish law, on the other hand, has a special provision which covers a limited area but which is broad in its scope within that given area. Both sets of laws call for an independent institution dedicated to enforcing anti-discrimination provisions. A third group of countries has

incorporated anti-discrimination provisions into legislation geared primarily towards regulating other mainstream areas.

In this chapter, we will describe the existing legal framework in Norway and demonstrate that in its current state it does not afford much protection to those who have been discriminated against. A new legal framework is required.

## **Outline of the current legal framework**

There is no general law against discrimination in Norway. There are few and fragmented provisions under the current legal framework that are intended to protect against ethnic discrimination. Most of these are included in the Penal Code.

### **Goods and Services**

Penal Code para 349a is designed to protect against the supply of goods/provision of services in a discriminatory way. Theoretically, this provision covers various categories under which reports suggest that there are numerous incidences of discrimination. For example:

- Refusal of admission to pubs, night clubs and discos
- Refusal to provide health care services, or to render services in hotels, restaurants and shops
- An Estate Agent's active discrimination in the provision of services (i.e. not just acting as the agent of a 3<sup>rd</sup> party's discrimination)
- Discrimination in the delivery of bank, insurance and other consumer services
- Discrimination in the delivery of other types of goods/provision of other types of services

It was intended that Penal Code para. 349a should have a very wide application in combating discrimination. But many of the breaches do not attract the prescribed sanction.

### **Racist Language**

It is an offence under Penal Code Para 135a to spread racist propaganda. This provision counterbalances the right to freedom of expression.

Having ratified the UN Convention on Elimination of Racial Discrimination (21 December 1965) in 1970, Norway enacted Penal Code Para 135a and 349a because the existing legislation did not go far enough in the protection of individuals. A question mark remains over whether the new legislation has made any difference in the 30 years since its enactment.

### **Discrimination in the workplace**

Worker Environment Act covers the worker protection and working environment. It is an offence under Worker Environment Act Para. 55A (2) for employers to treat someone less favourably on the basis of their race, skin colour, beliefs, national or ethnic origin in cases involving recruitment or promotion but this provision is not satisfactory as we outline in our report.

## **Other Provisions**

Racially motivated violence attracts a higher penalty under Penal Code Para 232. Under Penal Code Para 292 special attention is paid to whether the infliction of an injury was racially motivated when determining whether the injury was severe or not.

There are other provisions that were not specifically aimed at combating ethnic discrimination, but can nevertheless be used in combating such discrimination.

- Worker Environment Act Para 60 protects employees against unlawful dismissal. This can also be relied upon when the dismissal has resulted from ethnic discrimination.
- Worker Environment Act Para 12 forbids harassment and bullying in the workplace. The provision applies to all employees. Ethnic background is not specifically mentioned in the legislation.
- The Marketing Act includes a provision that makes advertisements that are *contrary to good marketing practice* illegal. This provision can be used to block advertisements with a racist content.

Storting (Norwegian Parliament) adopted **The Government's Human Rights Bill** (Proposition No. 3 (1998-1999) to the Odelsting) by the 21 May 1999. The Act incorporates three international conventions on human rights into Norwegian domestic law. These are; The European Convention on Human Rights, UN's International Covenant on Civil and Political Rights and UN's International Covenant on Economic, Social and Cultural Rights.

Efforts to bring existing laws in line with the new law have already begun. It is too early to comment on the effect, if any, this law will have on the protection of individuals who have been the subject of ethnic discrimination.

## **The current anti-discrimination legislation is inadequate**

The areas covered by anti-discrimination legislation have been mentioned above. Some discriminatory actions are not sanctioned simply because they are not covered by existing legislation. Legislators have up to now focussed only on specific discriminatory practices, thereby overlooking the need for enacting systematic, thorough and general anti-discrimination legislation. The current legislation is therefore fragmented and incomplete.

The following are examples of incidences which are either not covered by current provisions, or which fall into a grey-area of legal interpretation:

- Employment Agencies which implement their client's request for Norwegian-only staff.
- Letting/Accommodation agencies that refuse to rent apartments out to persons from ethnic minorities.
- Estate Agents who promote their client's discriminatory requests.

The situation would have been quite different if there were a more general anti-discrimination law in force.

### **How does the current legislation function in practice?**

Only one case involving Penal Code Para 349a has been tried in court in the 30 years since its enactment. This cannot be due to the fact that there is no discrimination in Norway. Other possible explanations will be put forward by us below.

### **The law relating to criminal offences is interpreted restrictively**

Criminal law provisions attract a more restrictive interpretation than civil law provisions. The effect is that an action that is clearly discriminatory would not attract the prescribed sanction unless it can be shown to be in breach of the criminal law provision in question. A good illustration of this is the Supreme Court judgement of 27 August 1999 (case no. 19/1999) in a case in which it was claimed that Penal Code Para. 349a was breached by a letting agency through its index card system, which purported to limit some properties to Norwegians only (see also in Chapter 6 on discrimination in the housing market). The court construed the provision restrictively and the law governing the supply of goods/provision of services was deemed not to apply to the situation where a letting agent re-stated her client's request for the apartment to be rented out to "Norwegians only".

Despite the fact that persons with ethnic minority backgrounds were offered a service which was inferior to that being offered to ethnic Norwegians, the Supreme Court decided that the provision does not cover the situation where a the client's discriminatory request is merely re-stated by an agent. The Supreme Court's decision to differentiate between *delivery of a service* and *acting as an agent in the delivery of a service* sets a precedent and will be of significance when considering an estate agent's actions in the sale and purchase of property and the activities of employment agencies.

### **Criminal law provisions attract a heavier burden of proof**

Anyone alleging breach of a criminal law provision is under a heavier burden of proof than would be the case in a civil law matter. The result is that it is more difficult to prove that an offence has been committed under a criminal law provision because of the need for the evidence to prove this *beyond reasonable doubt*. If there is *reasonable doubt* in a criminal law matter, the accused is given the benefit of the doubt. The ordinary burden of proof in civil matters is that, *on the balance of probabilities*, a breach of the provision in question has occurred.

Furthermore, it must be proved that the treatment was discriminating and that the intention was to discriminate because e.g., the victim had a different skin colour. It is also difficult to prove the accused's guilt in a case involving discrimination.

### **Inadequate follow-up/prosecution activity in cases involving discrimination**

It has been proved over the years that the police and prosecution authorities either lack the will to, or encounter insurmountable obstacles in enforcing the law and following-up/prosecuting cases involving discrimination

The police and prosecution authorities' inadequate follow-up of discrimination cases is illustrated by the following case involving medical treatment.

#### ***Case 82/99; Medical treatment of patients from other cultures***

*The Client (C) was refused medical treatment at a hospital on the basis that he was from a "different culture". The hospital wrote to the patient stating:*

*"The effect of treatment at (the hospital) has, in our experience, been very limited for patients from other cultures with chronic pain ... (We) have therefore decided not to prescribe such treatment".*

*OMOD (The organisation for Combating Public Discrimination) reported the Chief Medical Officer and the hospital to the police for breach of Penal Code Para. 349a. The case was thrown out by the police and the Crown Prosecutor rejected a complaint about the police procedure. After heightened media attention, the Crown Prosecutor criticised the police for conducting a flawed investigation but concluded that any criminal liability on the part of the accused was time-barred under the "statute of limitations".*

*The Attorney General found that the Crown Prosecutor's handling of the case was flawed in several areas. He found that the allegation was not given enough basic attention and that further investigations ought to have been carried out. The Attorney General's findings were concrete and he gave details of what ought to have been done in the case. The prosecution authorities ought to have: given the patient a hearing, collected statistics regarding the total number of patients with immigrant background who were given the treatment in question in that year, and given the hospital team which handled the patient's request a hearing.*

*Legal action is being taken against the Chief Medical Officer and the hospital for compensation.*

The Centre is covering legal costs in connection with the action for compensation. Lack of evidence usually limits the possibility to pursue such cases. On this occasion we have concrete and written evidence of discrimination.

The reaction-threshold of the authorities is far too high. This gives out the wrong signal. Perpetrators of discrimination are able to do so without risking punishment or any negative reaction. Victims of discrimination are given the impression that society

does not take this problem seriously. Discrimination is a big problem for many ethnic minorities.

### **What about the Injuries Compensation Act?**

Whenever the police have thrown out a Para. 349a case, the victim's only remaining alternative is to take private legal action against the discriminating party. Such action can, in theory, be based on a claim for compensation under the Injuries Compensation Act.

The Act was not primarily designed to give protection against ethnic discrimination. In many cases the victim will not have suffered any economic loss. This means that the victim will lose the case if s/he is unable to demonstrate that the perpetrator has intentionally, or under gross negligence inflicted damage. This is difficult to prove. The experience from cases involving the Gender Equality Act point to the fact that no court has ever found that the perpetrator has intentionally, or as a result of gross negligence inflicted damage on the basis of discrimination. This despite the fact that many judges are satisfied with evidence which confirm that the perpetrator has discriminated against the victim on the basis of gender, in contravention of the Gender Equality Act. There is also not a single judgement where the victim of gender discrimination has been compensated under the Injuries Compensation Act. There is no reason to conclude that a similar action based on ethnic discrimination would yield any different result.

Even in instances where the victim has experienced economic loss there are still many obstacles. The victim has the burden of proof and in many cases the evidence is insufficient because ethnic discrimination occurs in cases where it is impossible to gather the kind of evidence deemed weighty in a court of law. There are also high costs involved in bringing an action. In addition to covering ones own costs, there is a risk that one will be liable to pay the other side's costs if one loses the case. There is often a big difference in the position of strength between the discriminating party and the victim.

This means that one cannot expect that the victim will initiate a private prosecution under the Injuries Compensation Act.

### **What about implementing sanctions under civil law provisions?**

There are many differences between sanctions under the civil and criminal law, and other jurisdictions have implemented provisions including civil law sanctions. Such provisions are to be found, for example, in Gender Equality Act, Marketing Act or the Law on the Ombudsman for Parliamentary Administration. Furthermore, the responsibility for enforcing the law based on civil law sanctions does not lie with the police or prosecution authorities.

The ombudsmen have over the past 10 to 30 years given numerous recommendations outlining the types of actions that are or are not acceptable within their respective areas. Such recommendations are absent in the area of ethnic discrimination and we are convinced that this is because there are neither civil law provisions nor an institution to enforce anti-discriminatory provisions. Such a system would naturally

contribute to a lowering of the reaction-threshold in cases involving ethnic discrimination.

Our view that civil law provisions are required does not should not be interpreted as a desire for criminal provisions to be replaced. On the contrary, we believe that criminal law provisions are necessary in order to deal with extreme cases involving ethnic discrimination. Civil law provisions ought to complement criminal law provisions.

### **The Centre's responsibility for development of the Case law**

So far there has been limited legal precedents involving the existing anti-discrimination provisions. There is a limited amount of experience of the legal system in terms of using the existing provisions. The Centre is able to cover legal fees when instructing a lawyer to pursue a case in the courts, which is of major significance, in accordance with the centre's mandate (see Appendix ).

The reason for this is to ensure that discrimination cases of major importance are brought to trial, so that legal precedents can be set down and developed within this area in Norway.

The Centre has agreed to cover legal fees in eight cases since February 1999. Four of these cases involved employment, two cases involved the police, one involved the provision of health services and the last falls within a grey-area which does not allow it to be put into any of the Centre's usual categories.

We emphasise that it is extremely traumatic for an individual to have to confront their employer in court. Despite our need for enhanced jurisprudence in this area, the Centre is not able to take a particular case further than the client her/himself wants.

## **Challenges –**

### **The way forward**

#### **An improved legal framework is required.**

There is a need for a general law against ethnic discrimination because the current legal provisions are incomplete, weak and difficult to apply in practice. Accordingly, it does not afford any protection to those who are discriminated against. Furthermore, an independent institution should be established for enforcing the law and to provide effective sanctions against perpetrators of discrimination.

The reaction possibilities for victims are inadequate. The current legal framework does not afford victims any opportunities to react in cases where they have been

subjected to ethnic discrimination at cafes/pubs/restaurants, in the job or property market. In major areas of community life, and in the individual's private life, it is almost impossible to react with clear legal provisions on your side. Currently victims of discrimination find that those who break the law go unpunished. The special rules and customs connected to the criminal law process and criminal procedure results in less effective protection against ethnic discrimination than would be the case if there were civil law anti-discrimination provisions.

The centre is looking forward to both the completion of the committee's new anti-discrimination law and the effect of the Human Rights Act on the Norwegian legal system.

## Chapter 2:

### Employment

**Discrimination in employment is a serious problem for those who have been the subject of it. It is important for a person's identity, self-respect and financial security that they are able to participate in gainful employment. Employment also leads to improved access to accommodation and other material goods. Being denied the opportunity to participate in working life has huge consequences for those concerned.**

**Discrimination in employment is also a significant social problem which goes far beyond the individuals concerned.**

The unemployment level among people from ethnic minority backgrounds is higher than that among ethnic Norwegians. There are many reasons why ethnic minorities encounter difficulties in the job market. The establishment of an employment relationship between employee and employer is dependent on many players. Colleagues, management, working environment watchdogs and trade unions all have a role to play in discrimination. Different agreements and regulations also affect the employment relationship, for example the Working Environment Act, or special local regulations.

Discrimination does not happen in a vacuum. Behind concrete discriminatory practices lie many factors, which determine the way in which companies, organisations and institutions in their working life treat ethnic minorities.

The responsibility for Fatima being harassed at work lies with the employer, the working environment watchdog and the trade union. Fatima is not – and should not be – alone in her responsibility to resolve such a situation. In such a situation it is natural to ask:

- Is the problem taken seriously by those in authority at the place of work?
- Is there any protection under the law?

- Are there real attempts made to resolve the situation where she is, or is she supposed to move to another company?

When exercising our legal aid mandate our primary concern is the individual. However, in order to document discrimination in employment one has to look into the structures and mechanisms both within and beyond working life. Co-operation with others gives us insight into the ways in which discrimination can be combated in the workplace.

## **Discrimination in the job market**

Some argue that there is no discrimination in the job market and that unsatisfactory Norwegian language skill or poor formal qualifications explain why immigrants encounter difficulties in finding employment. However, several studies have shown that some procedures that are used in places of work are discriminatory.

From its inception until 1 October 1999, the Centre for Combating Ethnic Discrimination has provided legal aid in 34 cases concerning discrimination in employment. This represents the largest category in relation to the total number of cases.

The "Employment" category covers a diverse amount of employers and employees. The Centre is not in a position to make any detailed comments about the reasons for discrimination at this time. However, since this is the largest category, we would like to outline a few main points.

### **Where, by whom and in which way is discrimination practised in employment?**

Employees who we have supported have been both highly fluent and weak Norwegian speakers. There were highly qualified as well as unskilled.

The Centre has provided legal aid in cases against private as well as public sector employers, in small, medium and large companies. Perpetrators of discrimination were employers, management and also colleagues.

There are many different ways in which the discrimination happened. It varies from the overt, e.g. a Muslim woman being told at an interview that wearing hair covering is not in line with the company's image and that she will therefore not be offered a position, to subtle, e.g. an ethnic minority employee not being invited to company social functions.

### **What type of discrimination is carried out in the job market?**

Categories used for the different types of discrimination are:

- *Discrimination in Recruitment and Selection* represents the largest proportion (38.8%) of our complaints. This area also receives considerable research and media attention.
- Cases involving *Harassment* and *Unlawful Dismissal* represent the second largest categories (both at 18.4%)
- *Discrimination re- Promotion* and *Illegal Temporary Contracts* each represents 10.2% of the cases.

### **Public versus private sector**

There are two categories with notable differences between the public and private sectors. Out of the 19 cases involving *Recruitment and Selection* discrimination, 12 were from the public sector and 7 from the private. On the contrary, there were 7 cases from the private sector and 2 from the public sector dealing with *Unlawful Dismissal*. The other categories show no significant differences between public and private sectors. These figures will be compared to new ones when writing the next report.

## **Employment Laws**

Legal provisions and agreements between the parties concerned govern employment relationships. The Worker Environment Act, which covers the worker protection and regulates the working environment is the most significant for most employees. It covers all enterprises in Norway with one or more employees.

The Civil Servants Act, which contains regulations about, *inter alia*, advertisement of vacancies, recruitment and termination of employment cover employees in the state sector. The Civil Servants Act replaces chapter 12 in the Worker Environment Act where the person concerned is employed in the state sector. Other provisions of the Worker Environment Act apply to state sector employees as well. In addition the Public Administration Act and the Public Service Act contain general rules for the way in which public sector bodies should operate.

### **The Centre's strategy on Employment Law**

Persons who come to the Centre for Combating Ethnic Discrimination for legal assistance in employment cases are entitled to the same quality of assistance s/he would have been given by a lawyer. Most disagreements between employer and employee are resolved in out-of-court settlements and the Centre contributes in negotiations and represents employees along the same lines as a private lawyer would.

When one attempts an out-of-court resolution to a dispute it is important to identify the activity which breaches the law. In some cases we have, after consultation with our client, chosen not to focus on the discrimination element where this is not clearly provable (in a legal context). In our experience, the fact that one alleges discrimination without sound evidence leads to great difficulty in getting employers to agree to the terms of an out of court settlement.

Gaining compensation for the activity that the client has experienced is sometimes enough to satisfy the client despite the fact that there has been no admission of liability for discrimination by the employer. Some clients are so aggrieved that it is crucial to them that the employer admits that discrimination has occurred. The Centre takes the client's wishes into account when deciding on strategies and methods.

### **The Centre's Experience in Employment Law Cases**

The employer is in a very strong position as regards recruitment decisions, especially in the private sector. Public sector employers have more limitations imposed on them as regards recruitment procedures. This includes special provisions connected to the Public Administration Act. There is also a "Qualification principle" as outlined by The Parliamentary Ombudsmann for public Administration in case no. 1765/85. According to this principle, the qualifications required for the position are of primary concern when evaluating which candidate is most suitable. The person selected should, as a general rule, be the one that possesses most of the qualifications thus outlined.

It is an offence under The Worker Environment Act para 55A for an employer to discriminate during recruitment and selection. The employer is not allowed to take the candidate's ethnic origin, skin colour or religious beliefs into account when evaluating their suitability.

The Centre has received several enquiries from persons who believe they have been discriminated against in recruitment. Some of them have applied for positions for which they are qualified. Some have also had a sound connection to the employer via numerous short-term contracts.

Both public and private sector employers attach huge significance to the concept of "Personal Qualities" during selection. This is often stated, as the reason why an otherwise well qualified candidate has not been recruited.

The Worker Environment Act has been amended in 1998 in an effort to provide protection against ethnic discrimination. The draft amendment included a provision for mandatory duty to provide information and a reversed burden of proof. The fact that these two elements have been left out means that it is almost impossible for a candidate to take action against discriminatory activities during selection.

Under the current law, the employer is not under a duty to provide information regarding the nature of education, experience and other qualifications required for the job. Nor are employers under a duty to explain to Candidate A, the reason why Candidate B was offered the job which Candidate A has applied for. The situation is different for public sector employers. There are specific regulations outlining the rights of the candidates for relevant information.

A reversed burden of proof is also required to make the law more effective. It would work thus: Where a candidate alleges discrimination, the employer would be under a duty to prove that the treatment is not unlawful. The ability and willingness of employers to rely on "Personal Qualities", means that since the candidate has the burden of proof s/he would have to prove that the decision was not made on the basis

of the personal qualities of the person selected, but on unlawful discrimination. The reverse burden of proof would force the employer to state in more concrete terms the "Personal Qualities" upon which the decision was based.

There is also the need to incorporate a duty of /right to compensation in accordance with what the court feels is just and equitable. This would result in more of a financial incentive for victims to initiate an action against employers.

### **Discrimination in Promotion Cases**

The Worker Environment Act para. 55A forbids discrimination in promotion and internal recruitment. The problems connected with pursuing claims using the existing law in these cases are very similar in character to those outlined above.

### **Harassment in the workplace**

The Worker Environment Act para. 7 calls for the place of work to be safe and orderly. Under para. 12 employees should not be subjected to bullying or harassment, and should be afforded reasonable opportunity for professional and personal development through employment.

If an employee has been harassed, the perpetrator may be liable to pay compensation. The employer may also be liable to pay compensation whether or not they are to blame, as long as discrimination has, in fact, been proved.

In cases where on the job harassment occurs, it is desirable that the situation is improved to a level that allows the victim to continue in his/her position. Whenever such activities result in a court hearing, however, it usually becomes impossible for the victim to continue in their position, regardless of the outcome of the case.

### **Breach of the Worker Environment Act provisions regarding temporary employment contracts**

Worker Environment Act para 58 contains provisions regarding the use of temporary employment contracts in the private sector. It does not apply to public sector employees. The rules in the Public Administration Act make it easier for temporary employment contracts to be used within the public sector.

Under the Worker Environment Act an employer is allowed to use temporary staff only in cases where the employment is to last for a limited time, is under a work experience scheme or where the job is temporary in nature. According to legal practice, the employer has the burden of proving that there is a good reason for not initiating a regular employment relationship. The question of whether or not the employee should have been hired on a temporary basis is answered at the time of legal challenge by evaluating the actual employment relationship.

Through our legal aid practice, we have already seen several instances where employees with ethnic minority backgrounds have been hired on short-term contracts.

The Centre has approached several labour organisations in an effort to record the extent of the problem and in order to evaluate the problem in a larger perspective.

Labour organisations have neither systematic information gathering nor reporting routines for such problems. The use of temporary employment contracts and the huge fraction of part-time employees are a general problem in several sectors. Employees in poorly organised companies usually work without any employment contract of any sort. Under the current law the employee has the responsibility to state his/her claim to permanent employment. In practice, many temporary employees are afraid to demand permanent employment.

Not all disputes are resolved out of court. If a case is deemed to be of primary importance, the Centre may cover legal costs associated with bringing the case to trial. We have, for example provided legal assistance in a case involving the use of temporary contracts. The employer in this case is a state organ and this was the basis on which we decided that the case was of primary significance. If the courts deem the use of a temporary contract illegal in this instance, it would have significant consequences for many other employees.

### **Use of other institutions for enforcing the Worker Environment Act**

In certain situations it is natural to refer a client to organisations such as the Labour Inspection or pursue a case via The Parliamentary Ombudsmann for public Administration.

The Ombudsman has the mandate to deal with cases involving public sector employers. The labour Inspection is responsible for enforcing The Worker Environment Act. However, the Labour Inspection is not allowed to intervene in disputes between employer and employee that are private in nature. Hence the Labour Inspection cannot intervene in conflicts based on the Worker Environment Act paras. 55A, 58A, nor 60 (wrongful dismissal). On the basis of an agreement with the Centre, such cases are transferred to the Centre with effect from January 2000.

## **Anti-Discrimination in Employment Law – Approaches of other countries**

It is interesting to look at the legal provisions in effect in Sweden and the UK for combating discrimination in employment. Sweden and the UK approach discrimination in the workplace in a different manner.

In Sweden the Anti-Discrimination Law came into force 1 May 1999. The new law protects the victims of ethnic discrimination in connection with recruitment or employment. It also protects against racial harassment at work and imposes a duty on employers to take active steps to combat ethnic discrimination. The prohibition of discrimination relates to both deliberate and non-intentional discrimination. In addition, the burden of proof falls on the employer (the so-called reverse burden of proof). The employer must be able to explain objectively why he or she chose

Candidate A in cases where a better qualified Candidate B was not offered the job. Employers found guilty of breaching anti-discrimination laws are liable to pay compensation to the victim. The intentions of the employer are taken into account when arriving at the quantum of compensation which is to be paid. Enforcement of the law is the responsibility of the Ethnic Discrimination Ombudsman and labour organisations.

The UK Race Relations Act 1976 has been in effect for 24 years. In accordance with the Act, the Commission for Racial Equality was established for enforcement. The Act applies to all employers and employees as well as to all aspects of working life including recruiting, promotion and training, salary, termination and working hours. It also forbids discrimination when acting as an agent in awarding employment contracts. The Act gives victims the right to compensation.

The Commission that is currently working on a proposed law against discrimination in Norway will most probably take a closer look at the provisions in effect in the UK and Sweden. The Centre looks forward to this work. At the same time the Centre is actively engaged in ensuring that cases challenging discrimination in recruitment, on the job, or regarding termination are brought before the courts.

### **Focus on Employers**

A survey carried out by Norwegian Gallop Institute primarily involving employers in the Social and Health sectors and the Central Administration outlines some of the barriers which immigrants face in the job market.

- A majority of employers surveyed say that they are more likely to employ immigrants with Norwegian qualifications than with foreign qualifications.
- Many have doubts about the loyalty of immigrants.
- Employers are afraid that immigrants will not be able to balance management interest with customer interest.
- Employers feel that immigrants demand more of management attention because of poor Norwegian language/cultural skills.
- Having competence in non-western cultures is rarely regarded as an added bonus.

Another survey regarding immigrants in the private sector shows that non-Western immigrants with higher education have poorer chances at being employed than Norwegians with corresponding educational backgrounds.

Yet another survey conducted for a business weekly newspaper in October 1999 shows that employers are generally sceptical to many groups of employees. 42% in the survey feel that being an immigrant counts negatively in employment. This survey shows that there is a reluctance to hire persons on the basis of their ethnic background and that employers have perceptions that can result in discrimination in practice.

From the point of view of the job seeker, many are left with the impression that they are rejected because of their ethnic or national background. They are locked out of the employment process.

In many cases their personal qualities are not evaluated. It is the prospective employers' perception of the attributes of the group they belong to that matters most.

### **The role of Trade Unions in cases involving discrimination**

Trade Unions should normally support individuals in cases regarding salary demands, during re-structuring or redeployment and in conflicts with management. There are of course differences in regulations governing private and public sector organisations so that the duty of the Trade Union Officer would vary from company to company, but the employee is entitled to some form of assistance regardless.

It has become obvious through our legal aid practice that Trade Unions do not provide satisfactory support to victims of discrimination in employment. Union officials have also given the impression that they are not aware of how such cases should be managed.

The Centre's objective is to co-operate with the Trade Unions and ensure that individual ethnic-minority employees receive support from their unions in demanding their general employment rights – but also in cases involving discrimination.

## Challenges –

### The way forward

There is work in progress in several areas aimed at combating discrimination in employment, to ensure that minorities enjoy the same rights on the job and to increase the number of employees with minority backgrounds in government departments. The Centre has registered an increased awareness of the theme "minorities in employment".

Negotiations are becoming more and more concrete. This is very positive. In the meantime there is still much ground to cover on this theme. Protection must also be by other means than by law. Society has also developed other mechanisms that should work in the interest of minorities. This involves the public and private sector, labour organisations and the parties involved in employment.

### **Trade Unions**

LO (the largest trade union in Norway) has through policy statements, speeches, campaigns and slogans stated its commitment to combating racism in employment. We are also aware that YS (trade union for academics, engineers etc) at a high level shows its commitment to combating discrimination and racism. However there remains a gap in the positive commitment of the organisations and the actual

assistance afforded individual employees with ethnic minority backgrounds by local union officers.

In our view, Trade Unions should:

- Initiate training programmes for union officers on how to provide assistance in cases involving discrimination.
- Increase awareness of the employee representative in selection processes
- Increase the recruitment of ethnic minorities within its own ranks (e.g. members and officers)
- Counter negative attitudes to immigrants and refugees among union officers.

Trade unions (from the main organisation right down to the local branches) have a job to do in terms of providing the same level of support to minorities in employment as they give to ethnic Norwegian members. Our contacts with the Trade Unions have shown great interest in obtaining information about discrimination from us and co-operating in order to find solutions. We have also received enquiries from individual organisations.

### **Parties involved in employment**

The state, private employers and employee organisations all have a shared responsibility.

According to the State Main Agreement (1997-1999)

*"It is a prime objective to contribute to better integration of persons with immigrant backgrounds in the Norwegian employment sector. It is important to remove obstacles for recruitment and integration of persons with immigrant backgrounds, so that employers can utilise their talents in order to achieve the organisation's targets. The parties agree that employees with such a background are to be afforded the same opportunities for development as other employees in the organisation."*

(Our emphasis).

If we compare the achievements regarding immigrants with those regarding gender equality, we notice a big difference in how concrete and broad the gender perspective is into the different level of public administration and private sector. The Gender Equality Act is given broad objectives of promoting equality between the sexes within all sectors of society. The Gender Ombudsman receives complaints on breaches of the law, gives information and guidance on the law, and suggests settlements between the parties. Why is the legal standard applied to women not applied to minorities?

### **Private Sector**

Ethnic minorities are well represented in some areas of the private sector. E.g. the hospitality industry and transport. NHO (the Confederation of business and industry) has stated its commitment to increasing the number of immigrants in the private sector through the mentor-scheme. This is positive and the scheme will certainly have a positive effect nationally.

Activities to encourage diversity in the workplace have been limited to women (the gender dimension).

We must also draw attention to the difficulties in gaining insight into the recruitment's selection processes used in private enterprises, something that makes one incapable of asserting whether there is a discrimination or not.

In a situation where many sectors lack qualified employees, it is important to take a fresh look at the well-qualified persons with immigrant backgrounds who often have jobs for which they are overqualified.

## **Public Sector**

Several departments have developed plan of actions for recruiting persons with minority backgrounds. The Plan of Action for Recruiting Persons with Immigrants Backgrounds to the State Sector, for the period 1998 to 2001, put forward by the government a year ago does not go far enough. The minister of the Ministry of Labour and Government Administration announced a range of concrete proposals in August 1999 in an effort to improve what she calls "poor recruitment of immigrants in government positions" (*Vårt Land* newspaper 27 August 1999). Despite this statement, immigrants are still under represented in the public sector.

According to the paper, the minister will:

- Explore the possibility of stipulating the number of persons with immigrant background that should be employed by the state in line with the objective that there should be 30% women employed in the state sector by the beginning of 2000.
- Record the number of immigrants employed by the state at any one time.
- Consider whether advertisements for vacancies in the state sector should encourage immigrants to apply.
- Encourage state sector employers to operate binding co-operation agreements with the Job Seekers Agency regarding referring persons with immigrant background.
- Review the language competence requirements for state sector positions.

The Centre will continue to monitor the implementation of this plan. We think that the State has a duty to establish anti-discrimination schemes. If situation has not improved at the end of the timetable for the above plan, the State must then clean up areas of discrimination.

## **Chapter 3:**

### **Law of children**

**The Centre for Combating Ethnic Discrimination has observed, through its work, examples where the Child Welfare Services discriminate against parents**

**with minority backgrounds. We have provided legal aid in six cases where the Child Welfare Services either was about to, or had already made decisions. All cases were brought to the attention of the Centre by parents asking for support.**

## **The legal framework**

There are few aspects of the relationship between parent and child that are governed by law. There is, however, the Children Act, which outlines the rights and duties of parents and children. In addition there is the Child Welfare Services Act which regulates the public authorities responsibility in cases where children are under unsatisfactory conditions at home.

We have provided advice in several cases involving the school subject Christian knowledge, and Religious and Ethical Education. The issue is whether teaching this subject infringes on the parents' right to decide their child's religion, or the right of the child to decide him/herself. Another area of advice has been the law governing the balance of the rights of the child versus the right of parents to make decisions on behalf of the child.

This chapter deals mainly with cases governed by the Child Welfare Services Act.

## **The Child Welfare Services Mandate**

The Child Welfare Services should ensure that children and young persons are in an environment suitable for their good health and development. If a child or young person is found in conditions in which their health or personal development are adversely affected, the Child Welfare Services should step in and provide the necessary help.

The Child Welfare Services can contribute to improve a child's environment in many ways. If the child is found in extremely unsuitably home environment the Child Welfare Services can take over responsibility for caring for the child from the parents. Every action of the Child Welfare Services should be taken in the best interest of the child.

## **Advice and decisions of the Child Welfare Services**

The Child Welfare Services co-operates with parents in order to improve the welfare of children. For example, parents may agree that they are not in a position to provide the level of care a child requires. However, in some cases, this co-operation is the result of the parents' fear of the consequences if such co-operation was denied.

There are also cases where the Child Welfare Services acts without the agreement of parents. In such cases official authority is required before the Child Welfare Services takes the course of action.

Where the Child Welfare Services decides that a child should be removed from the home, this must, as a general rule, be after all possible strategies to improve the situation in the home have been exhausted, without any positive result. This course of action should not be taken if there remains some means of ensuring that the child's welfare is lifted to a satisfactory level in the home.

## **Experience of the Centre in cases involving the Child Welfare Services**

It is impossible to say, on the basis of our experience, whether systematic discrimination exists in Child Welfare Services cases. The Centre has provided legal aid in six cases where Child Welfare Services acted without the approval of the parents. Four of the cases concerned taking away the parent's rights to bring up the children.

In cases where Child Welfare Services wants to implement strategies that are not approved by parents, the parents are entitled to free legal assistance. The Centre gives advice to such parents, but will only represent them vis a vis another party if explicitly agreed with their attorney. This is because the parent's interests are not best served when several agents who are independent of each other represent them.

The fact that the Child Welfare Services acts in a case involving ethnic minority parents is obviously not discriminatory in itself, but the Centre has observed that there is a difference in the treatment of some such parents compared to ethnic Norwegian parents. We will illustrate this with a couple of examples.

### **Child Welfare Services' lack of foreign language skills can have unfortunate consequences**

*Case 285/99: A mother came to Norway in 1999 with her three children. At least two of the children were seriously sexually assaulted by a man who worked in the neighbourhood. Neither the mother nor the children were offered psychological/psychiatric help in dealing with this difficult situation. The local council was aware that the family was also subjected to physical/sexual abuse before moving to Norway.*

*The mother requested help from the local council without any result. In a conversation to the Social Services Section she said in English (which she speaks as a second language) that she would rather die than continue living in the situation in which the family was. The Child Welfare Services interpreted this to mean she was about to kill her children and commit suicide.*

*Two days later all three children were taken away from the mother and placed in a child's institution, based on the mother's suicidal tendencies.*

*With the help of her lawyer and the Centre, the mother explained to the local council that she only meant to highlight how difficult the situation had been for her and her children. The council was reluctant to reverse its decision, and denied the mother visits to the children unless accompanied by two police officers.*

*It was only after medical evidence concluded that the mother was not suicidal that the Child Welfare Services reversed its decision. The children returned home after 12 days.*

According to the Civil Services Act, the Child Welfare Services should not make decisions before all the material facts are known. All the material facts cannot be said to be known in a situation where the communication problem between the parties is as big described in the above case. It is therefore important to use an interpreter in cases where the Child Welfare Services cannot understand the language of the parent.

The children experienced an unknown amount of psychological damage as a result of this episode. The Child Welfare Services had not even translated their written decision for the mother so that she could understand what was being alleged. She was totally unaware of why the children were taken away from her before the Centre provided her with a translation of the Child Welfare Services' decision - in a language she could understand. This is most unsatisfactory.

### **The Child Welfare Services' work has in practice led to family break-up**

The Child Welfare Services' main objective is to protect the best interest of the child. In this example, the actions of the Child Welfare Services led to a worsening of the welfare of the children concerned.

*Case 15/99: The Child Welfare Services recommended that two children were sent to kindergarten so that they could mix with other children and learn Norwegian better. The parents did not agree and were unwilling to send their children to kindergarten.*

*This Child Welfare Services then decided that the home environment was not conducive to proper development of the children, and when the parents refused to send the children to kindergarten, applied to the authorities to have them removed from the home.*

*Before the case was opened the mother and children moved away to the mother's country. The father, an ethnic Norwegian, remains in Norway and works here. He cannot move to his wife and children because the language difficulty would make it impossible for him to find satisfactory employment there.*

The Centre has not evaluated whether the Child Welfare Services' view on the situation in the home was correct or not. What is clear, is that the children's situation is not better today than it was before the Child Welfare Services began working with the family. Now that the children are resident abroad, the Child Welfare Services has no jurisdiction over the children and is thus unable to ensure that they have a suitable home environment.

It is important for the Child Welfare Services to use time on improving the level of confidence which parents have in it. In the above example it is clear that the parent lacked confidence in the Child Welfare Services.

## Challenges – The way forward

What can be done in order to combat discrimination in the Child Welfare Services? The Child Welfare Services' objective is to ensure that children grow up in environments that are proper and that do not harm them in any way. The Centre must therefore explain the decisions and actions of the Child Welfare Services to some parents in cases where the Child Welfare Services has reasonable grounds for becoming involved.

However, the Centre's duty is also to highlight faults and shortcomings in the work of the Child Welfare Services. In our experience, the Child Welfare Services does not have enough awareness of multiculturalism, and does not attach enough weight to cultural differences when carrying out its work in cases involving ethnic minorities.

Some ethnic minority parents find it extremely difficult to bring up children in Norway. The reason is twofold: Firstly, parents have a duty to take care of children and set down limits. On the other hand, they are told that the limits must not be too harsh. This lead to some confusion with the result that fear of the consequences of being bad parents makes them not setting down the necessary standards for their children.

Some ethnic minority parents have a general suspicion of the authorities, and a particular suspicion of the Child Welfare Services. The Child Welfare Services has a responsibility to disseminate information outlining the nature of its work, and to deal sensitively with issues regarding families from ethnic minority backgrounds.

The Centre can contribute in helping to build up confidence between parents and the Child Welfare Services so that they can better co-operate with each other.

### Chapter 4:

## The Police and the Administration of justice

**The relationship between the Police and minorities is a sensitive one. This is because of many reasons. The duty of the police service is to act in the interest of the public and to uphold law and order. Ethnic minorities do not always experience that the police are there for them. After eight months of practice the category "police and the justice system" represents 20.7% of cases brought to trial. There remains a huge challenge in building a better relationship.**

## **The Current Position**

The Centre for Combating Ethnic Discrimination has supported several ethnic minority individuals who believe the police have discriminated them against. In their experience, individual policemen are stricter with people from ethnic minorities than with ethnic Norwegians. The police needs to rethink its tactics in order to gain the respect of the ethnic minority population. The police also play a vital role in the prosecution authorities' work. The Centre believes that the police should actively use its prosecution powers in enforcing sanctions against discrimination.

### **Policing Activity**

It is a matter of public confidence in the Police that police officers operate in the correct manner. This duty imposed by the section of the Police Act, which outlines "general rules on how the police should act". The police have huge powers and it is therefore necessary to reduce the possibility for abuse of such powers.

It is too early for us to comment on the general nature of the conduct of the police towards minorities. It is not our intention to stigmatise the whole police service, to identify those instances where policemen have behaved unfairly.

What we have seen is that:

- Individual police officers do not believe that ethnic minority persons are as truthful as ethnic Norwegians.
- Ethnic minority persons are not allowed to put their side of a case across to certain police officers.
- Ethnic minority persons receive extremely bad treatment from individual police officers.
- That individual police officers address ethnic minority persons using racist or inappropriate language.
- Individual police officers use unnecessarily brutal tactics on ethnic minority persons.

This results in grave injustices against persons who in all reality have not committed any offence of any description. Such activity reinforces the climate of mistrust between the police and ethnic minorities.

## **The Centre's experiences in cases involving the police and administration of justice**

The Centre has provided support to many clients by writing complaints against unfair treatment by individual police officers. In some cases we have also reported offences to The Special Investigating Body for Police Matters.

It is important that a complaint or reported offence gets thorough treatment by the police/ The Special Investigating Body for Police Matters. The Centre has noticed that the responses from such reports vary greatly. In certain cases we receive confirmation that a thorough investigation has been carried out as a result of the Centre's report. Such a response goes a long way in re-establishing the client's trust in the service.

In other cases the authorities merely and briefly state that there is no reason to apologise or that the police has committed no offence. Such unsubstantiated responses are unsatisfactory for both the Centre and our clients.

### **Truthfulness**

As mentioned above, a common thread throughout our cases is that persons with minority backgrounds are thought not to be as truthful as ethnic Norwegians. Even worse, people with ethnic minority backgrounds are often not given an opportunity to state their side of the story and the other party's side or the police officer's side is given as the official version of what happened.

*Case 184/99: The Client (C) found a plastic bag at an ATM (Cash dispenser) on the way home. He took the bag with him intending to deliver it to the police. Two security guards met C outside the subway entrance not far from the ATM and asked about the contents of the bag. The bag had earlier been reported missing by a lady and the guards thought they had found the "criminal".*

*The police were then contacted and arrived after a few minutes. The police did not believe C's version of events, nor did they solicit enough information from the person who lost the bag to determine whether or not C's explanation was true. They failed to ask her, for example, if she could possibly have lost the bag. This was not done until after C had spent 14 hours in a prison cell.*

*Upon arrival at the police station, C asked the police to ring and inform his 14 year old son who was home alone. The police refused to do so, despite several requests. While C sat in a prison cell, his son went to school crying the next morning because he didn't know what had happened to his father.*

*C was eventually released without being interviewed once.*

*The case has been referred to an attorney with support from the Centre so that it may be brought before the courts. The Centre is monitoring progress of the case.*

This incident is most unfortunate. One cannot help questioning police tactics in such a case despite the fact that it involved an individual police officer. It also confirms the

suspicion that minorities have that their side of the story is not as weighty as that of others.

### **Unacceptable language**

Members of the public should be treated with respect when being spoken to by police officers on the streets, during interviews and while in police custody.

*Case: The client (C) was out with friends when they were stopped by the police and asked for identification. One of C's colleagues asked why they had to provide identification. C said, half-jokingly "You have to do what uncle policeman says". The police officer responded "I am not your uncle, you (expletive!) darkie".*

It is unacceptable for police officers to use swear words, or demeaning words connected to a persons' ethnic origin.

### **Use of unnecessarily brutal tactics**

*Case 290/99: The Client (C) parked his car and walked off to get some change for the parking permit. When he got back he noticed that the traffic warden had placed parking fine on his vehicle. He then showed his parking permit to the warden in order to avoid the fine. The warden called him an idiot and refused to phone the police at the request of C. A second warden then rang the police.*

*Upon arrival, a police officer went directly over to C and without saying anything pushed him in the chest, but his arm behind his back and pushed him to the pavement. A second police officer went off to the traffic wardens. The police officer asked for ID. C gave his driving licence and address.*

*C was then put in handcuffs and when he tried to explain what had happened the police officer did not listen to him. He put C in the police vehicle and told him that he had not committed any offence, so was free to go. C responded that because he had been treated so poorly, he would like to be taken to the police station in order to explain himself.*

*C was driven to the police station and put in a prison cell. After three hours he was charged. The charge stated that he was in breach of penal code para. 333 by not giving his address to a police officer.*

*C refused to accept the charge and received a summons for breach of the above provision.*

*The Centre has drafted a letter to the police and to the Traffic Department. The Centre is waiting for a response from C.*

This case the police reacted with unnecessary force – force that was unreasonable when one considers the seriousness of the situation they were dealing with.

# Does it pay to complain about discrimination by the police?

Anyone who feels that s/he has been badly treated by the police can either complain to the Police Chief or report the incident to The Special Investigating Body for Police Matters.

## Complaints to the Chief of Police

The Centre believes that it is important to complain in cases where the police have not behaved in a proper manner. The failure of members of the public to complain gives senior police management the idea that the police behave properly. It is worth noting that the police often disagree with the facts involved in matters, which are the subject of complaints. In such cases it is difficult to arrive at the correct version of events, or to get the police to apologise for unfair conduct.

## Reporting to The Special Investigating Body for Police Matters

In cases where one feels that the police have committed an offence, the matter should be reported to The Special Investigating Body for Police Matters. This body was established to ensure an independent investigation of reported police officers.

A study carried out of The Special Investigating Body for Police Matters in 1999 shows that

- More and more police officers are reported to The Special Investigating Body for Police Matters.
- Complaints are more and more often based on gross misconduct in carrying out their duties.
- The number of police officers punished is still negligibly small (4%) in comparison to the total number of complaints.

In our experience, it takes an enormous amount of evidence to get The Special Investigating Body for Police Matters to find that an offence has been committed.

We will illustrate this with the help of one of the opinions given in a case. The case involved the question of whether the police were guilty of gross misconduct in exercise of their duties.

*Case: "How dangerous is a person with 6 leg fractures?"*

*The case involved the arrest of a person (P) at a Refugee Reception Centre following a deportation order. A staff member at the Reception Centre assisted the police officer. During the operation, P jumped out of a second floor window and fell flat on the ground. The police officer lifted P from behind, holding him under the arms,*

*pushed him up against the wall two –three metres away and handcuffed him. He was then taken to the police vehicle, placed in the back seat and bent over the seat. P informed the officer that he was in pain, but was asked to shut up several times.*

*The medical evidence in the case was that:*

*P suffered two fractures in the left leg, several fractures in the left foot and a broken left arm. It must have been obvious that P was in severe pain, which was worsened by the use of handcuffs, was led by the hands to the police vehicle, and was made to sit up once inside.*

*The opinion of The Special Investigating Body for Police Matters stated that:*

*"It is difficult to understand that a person who has jumped from a second floor window and is lying flat on the ground could be regarded as a threat."*

*"It must have been obvious that the proper thing to do was to call an ambulance"*

*"It was clear that P did not pose a threat in this situation"*

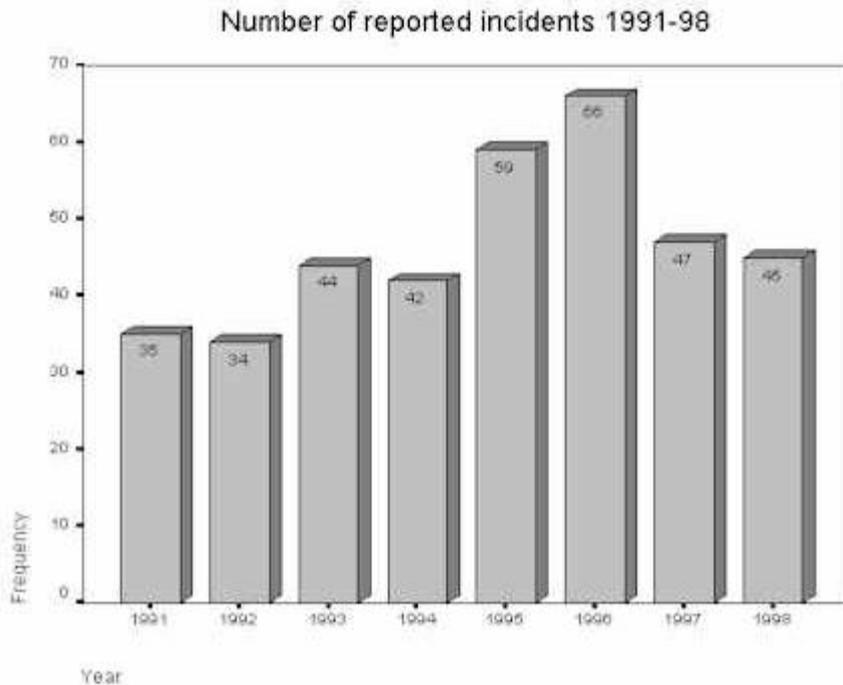
The Special Investigating Body for Police Matters has described the incident and further commented that: *"There are signs of an unacceptable misconduct in performing their duty/ ...the police used more force than necessary/...the police officer should have ensured that the use of handcuffs did not lead to severe pain..."*

However, the conclusion was that:

*"The treatment was clearly the result of a misjudgement ...However the Special Investigating Body for Police Matters has concluded that the treatment can neither be characterised as gross misconduct nor as grossly improper conduct."*

This is not just a legal problem. The Special Investigating Body for Police Matters' decisions form precedents and gives out signals as to what actions are acceptable of police officers.

## **The activities of the Police as prosecution and investigation authority**



As we have seen in some cases the police also play a key role in investigation of cases involving discrimination and racism. The above graph shows the changes in total reports of racial discrimination during the period 1991-98. Between 1991 and 96 the total number of reported incidents went up from 35 to 66 and thereafter down again to 45 in 1998. We are not aware of the reason for the reduction in the number of reported incidents.

The table below shows that a minority of cases involving racial discrimination results in a conviction. In 1998 45 offences involving racial discrimination were reported. Of these, 26 were investigated. The results of these investigations appear in the second section of the table.

<b>Cases concerning race discrimination (1998)</b>	<b>Frequency</b>
Reported	45
Not investigated	19
Investigated	26

<b>Cases investigated</b>	<b>Frequency (N=26)</b>
Dropped (lack of information regarding offender)	9
Dropped (due to lack of evidence)	8

Dropped (due to lack of capacity to proceed case)	1
Transferred	1
Fine	1
Indictment	3
Solved	3

Despite the fact that many discrimination cases are reported every year, almost none of them end up in court. The police throw out most of them. Many are thrown out because of a lack of evidence.

The Centre would like to work more closely with this problem during 2000. Any anti-discrimination provisions in the Penal Code do not cover several of the reported incidences of racial discrimination. This indicates that there is a need for changes to the law in this area. The Centre would therefore like to begin dialogue with the police in developing proposals for legislation covering areas of discrimination, which should be punishable in law. Such dialogue has already begun between the Centre and Oslo Police Department.

## **Discrimination in the administration of justice**

The Centre has through its legal aid practice noticed examples, where persons with minority backgrounds do not receive the same kind of treatment from the justice system as ethnic Norwegians.

*Case 70/99: The prosecutor said during criminal proceedings, "We cannot accept that these foreigners who come here and don't follow Norwegian law, are allowed to go free".*

Many will not react strongly to such views, as they, in themselves, are not especially distasteful. The statement becomes more serious when we look at who was saying it (the prosecutor attorney) and where (in a court of law). When the justice system is in the process of discovering whether or not an individual has committed an offence the fact that he is a foreigner is irrelevant. The images and general stereotypes that such language conjures up may well influence the fairness of the trial by making it less objective. Threats to the fairness of the judicial process introduced by a prosecution attorney cause the justice system to become weakened.

## Challenges –

### The way forward

**The Centre regards it as extremely important to support individuals who believe the Police have discriminated them against. The reason for this is twofold. It is important for an individual to get help and support to report an injustice inflicted on them by a public service body such as the police. It is also important that the leaders of different police forces are made aware of the discriminatory treatment which are conducted by their subordinates so that anti-discrimination work can begin, or can be stepped up in the police force in question.**

Unfair treatment can only be corrected if the wrongdoing is identified, and injustice not accepted. This ensures that the treatment is not repeated in the future. It is also important that the top level prosecution authorities are made aware of criminal activities, which are carried out by the police

#### **Limit the amount of cases thrown out**

The police ought to be more active in development of strategies for compiling, registering and investigating incidents of ethnic discrimination. It is important to give ethnic minorities the impression that reporting such incidents are not regarded as a burden for the force, but an area where the police co-operate and are interested in coming up with solutions.

#### **The Special Investigating Body for Police Matters must perform its role**

The Special Investigating Body for Police Matters is responsible for examining the way the police behave. Because the chances of being sanctioned are extremely low, police officers can take the opportunity to behave inappropriately. It is important for The Special Investigating Body for Police Matters to exercise its authority on such matters.

#### **Improve the contact with ethnic minorities during stop and search procedures**

The role of the police is to ensure law order and security for society. The use of the stop and search policy on foreigners affects the relationship between the local community and the police.

We regard this as an interesting area to look more closely at. The police must not always be on the defensive. They should inform the public that they are aware of the stigma etc. that can be attached to stop and search, but at the same time stating the reasons for doing so together with an outline of the rights of the person being stopped.

The Centre believes it is very helpful to use less confrontational methods in such cases and would like to enter dialog with senior police officers regarding means of devising and implementing such methods.

### **Results and Indicators of Success**

The Centre believes that it is important to devise a system for mapping out and evaluating the effect of schemes implemented for resolving problems. It is positive when one not only states a desire to better the situation, but also puts in place a means of evaluating the effectiveness of steps taken to do so.

The Centre will continue to communicate with the police service in order to follow up different issues raised above in addition to working with specific cases brought to us by our clients.

Minorities must be given information about the duties of the police and their responsibility to act in the interest of the community and in some special cases in the interest of minorities.

The Minister of Justice took the initiative in 1999 ask for a selection of a committee, which will work on a new law against ethnic discrimination, to be drafted by the end of 2000. There are many signs that current criminal law provisions are inadequate. This should, in our opinion, be one of the main areas of focus for the committee in 2000.

## Chapter 5:

### Religion in schools

**According to our mandate, the Centre for Combating Ethnic Discrimination should not just provide legal assistance in cases involving discrimination based on national or ethnic background. The Centre should also help individuals who believe they are discriminated against on the basis of their religion.**

Discrimination based on religion is a very emotional subject. Norway has a state religion. 90 % of the population of Norway belongs to the Church of Norway. This means that religion affects many areas of society – holidays, radio and TV programs, art, music and literature. The contrast between the religious activities of the majority population in Norway and among some people from minority backgrounds is great.

Most individual enquiries so long, involve the teaching of the subject Christian Knowledge Religious and Ethical Education (Christian Knowledge) in schools. A few enquiries involved other topics. This chapter is based on these enquiries.

It is important to note that whilst parents contacted us and complained about Christian Knowledge being taught to their children, there are also provisions in Norwegian law

stating that once a child reaches 12 years old, their views on the issue of religion should be taken seriously into account.

## **Children and the subject Christian Knowledge and Religious and Ethical Education in schools**

### **Regulations regarding diverse education and limited exemptions**

This subject was introduced in schools in 1997. According to a circular from the Ministry of Education, Research and Church affairs regarding diverse education and limited exemptions, the subject Christian Knowledge is intended to open dialog between pupils with different religious beliefs. Instead of the previous practice of dividing the class into different religions who then studied their own faith, it was desirable to have everyone together for dialogue on religion. In addition to such dialogue, the intention was to teach the history of Christianity as the religious culture in Norway. This was supposed to help in understanding literature, art, architecture and other cultural subjects that have been heavily influenced by the bible, the church, or other elements of Christianity.

The right to limited exemption from taking the subject is found in The Schools Act Para 13, no. 10. According to the circular from the Ministry of Education, Research and Church affairs, the above provision allows parents to request that their child be exempted from parts of the course at an individual school. This deals with a partial, not full, exemption.

The Ministry's view is that when parents request exemptions from clear religious activities, such an exemption should be granted. In such a situation it is not necessary for the parents to provide detailed reasons.

## **The Centre's Experiences**

The Centre for Combating Ethnic Discrimination has received several enquiries from parents who believe the teaching of this subject is problematic for their children. We have also been in contact with representations from religious organisations about the unease this subject causes members of their group.

### **How does the exemption rule operate?**

*Report from a mother, which has contacted the Centre: The mother of a Muslim pupil asked the school for information about the exemption rules for her child. She wanted him to participate in classes, not excluded, but that he is excused from certain areas, which were deemed unsuitable.*

*The Principals office responded that the school has a duty to provide diverse education. The school refused to offer an alternative class, but suggested that the boy could have a free period during the class (es) in question. The mother also noted that stories are told to her child from different religions, without explaining to the child*

*the origins of those "stories". She was of the opinion that such a practice was not proper education.*

The case illustrates how difficult it is to get information on the timings of different topics in the child's time schedule. Some schools are good at providing such information, but the parents who come to us do not feel they have been given adequate information.

Some parents have applied for total exemption. The schools in question rejected such requests without informing the parents that they were entitled to apply for partial exemption.

Some parents also report that what their children learn about their own religion is from a critical Christian standpoint, and often conflicts with the version they are taught at home.

Exclusion is also a big problem. Many feel that simply being given time out has a negative impact on the social development of the child concerned. Parents are keen for their children to be offered alternative lessons during the period of exemption from Christian Knowledge.

Both the Islamic Council and The Norwegian Humanist association are currently pursuing court cases denouncing teaching of Christian Knowledge as being in contravention of international law.

### **Full exemption versus partial exemption**

We assist parents who request for help in applying for full exemption despite the fact that the law does not allow full exemption. A part of the reason for this is that partial exemption has been tried, but with unsatisfactory result as regards the lack of alternative classes for children to attend. The authorities also assert that there is no documentation supporting the need for full exemption.

Parents believe that they have to argue in order to be granted an exemption. Both the child and the parents are left with the stigma of being regarded as bad tempered or rude because of the necessity to point out which particular activities or stories cause offence.

## **Challenges –**

## **The way forward**

The Centre for Combating Ethnic Discrimination has only recently begun providing assistance to parents regarding the teaching of Christian Knowledge and Religious and Ethical Education in schools. The Centre has received enquiries regarding

applications for both partial and full exemptions. The subject has only existed since 1997 and the idea of exemptions and providing alternative lessons is tackled differently from region to region and from school to school.

We can assert that individual parents find the introduction of this subject has resulted in discrimination based on religion or beliefs. We will be in a better position to make more detailed comments in later reports.

We have been in consultation with different groups of people and associations regarding this subject. We are also monitoring the court case launched by the Islamic Council against the teaching of Christian Knowledge and Religious and Ethical Education in schools. As mentioned earlier, it is also necessary to get some feedback from children and young persons regarding their experiences of the religious aspect of school life.

## Chapter 6:

### Discrimination in the housing market

#### **What do we know about discrimination in the housing market today?**

**In a thriving housing market there is a temptation to use discriminatory announcements when one tries to sell or rent out a house or apartment. The owner's search for the best paying buyer or tenant means that many are excluded from the housing market. The shortage of housing means that owners can also sort potential buyers out by criteria other than their potential buying power. It often counts very much against to be unemployed, student, single mother or foreigner. Despite the reasons for exclusion from the housing market being many, the Centre for Combating Ethnic Discrimination believes that persons with minority and/or immigrant backgrounds are especially vulnerable to this type of discrimination in practice.**

The 1996 Standard of Living Survey carried out by the Central Bureau of Statistics shows that 20% of the country's minority population have experienced discrimination in the housing market.

Most adversely affected are Somalis (60%) and Iranians (50%), whereas "only" 10% of Vietnamese and Pakistanis have experienced discrimination.

Immigrants and refugees to a large extent rent rather than own their housing. The result is that they are particularly affected by discrimination in the rent market. So far has the Centre received few enquiries from individuals concerning the housing market. This does not mean that there is no discrimination in the housing market. Surveys suggest that there is widespread discrimination in this area.

## **The legal framework**

There is currently only one legal provision directly governing discrimination in the housing market, the *Housing Associations Act, para. 10 (1) and (2)*. In addition, there are various other provisions, which can be used in the fight against different types of discrimination in the housing market. One may choose which angle to adopt depending on whether the discrimination has been perpetrated by an agent, the owner or landlord of the property or the management of the property (housing association), e.g. the board or general meeting.

### **Letting Agencies & Estate Agents**

It is questionable whether discrimination carried out by agents is covered by any of the existing legal provisions.

There is a breach, in theory, of Penal Code Para 349a - discrimination in the provision of goods and services (see Chapter 1 The need for a better legal framework). The term service includes letting and sale of property. Until the Supreme Court ruling of 27 August 1999 it was thought that Para. 349A was a key provision in the fight against ethnic discrimination carried out by estate agents/letting agents.

The Supreme Court ruled that Penal Code Para. 349A cannot be applied to agents involved in discrimination in the housing market.

The Estate Agents Act does not include any anti-discrimination provisions *vis a vis* agents themselves. Paras. 2-8 of the act deals with withdrawing permission to run an estate agent. The way the current law is formulated it is impossible to have such permission withdrawn despite agents repeated discrimination. This applies to both the situations where the agent directly discriminates, and where s/he passively forwards the discriminatory wishes of a client.

The Norwegian Estate Agents Association's own ethical rules include a provision forbidding discrimination on the basis of race, religion, gender or nationality. However, there has not been a single case where an agent has been disciplined for ethnic discrimination.

### **Private property owners and landlords**

Penal Code Para 349A does not cover the sale, letting or sub-letting of property. This means that owner who sells or let out a property and a tenant who sub-lets cannot be found guilty of committing an offence under this provision. This is because sale or letting of a property is not regarded as "goods" or "services" under the Act. Discrimination carried out by owners and tenants are therefore not covered by the Act.

### **Housing Associations**

There are provisions that can be used to combat discrimination carried out by the board or general meeting in a Housing Association.

The Housing Associations Act demands that the refusal to authorise someone buying, inheriting or sub-letting a part of the property is based on reasonable grounds. Despite the fact that the Act does not specifically deal with ethnic discrimination, it can be relied on in cases where such refusal is based on ethnic origin. If the board, for example, rejects someone who wants to take over a part of the property on the basis s/he is not an ethnic Norwegian this decision would be illegal on the basis that it is unreasonable.

Despite the above, the Centre for combating ethnic discrimination has experienced that ethnic discrimination does exist in cases involving board decisions on overtaking Housing Association property.

### **The Housing Act Committee**

A committee is currently working on proposals for changing the Housing Act and Housing Co-operatives Act. The committee was due to submit a report by the end of 1999. The Centre has made representations to the committee regarding discrimination in the housing market.

## **Acting as agent – The Supreme Court's ruling on discrimination in the housing market**

The Supreme Court ruled on 27 August 1999 on a case involving discrimination in the housing market. A summary of the facts in the case follows:

*A letting agent was charged with discrimination in breach of Penal Code Para 349A. She used an index card system of properties, which was offered to customers who paid for access to this information.*

*"Norwegians only" or "Norwegians who have permanent jobs" was written on several of the cards, at the request of the customers of the accused. The accused therefore clearly offered ethnic minorities a reduced service in comparison to ethnic Norwegians.*

*The Oslo City Court found the accused innocent. The legally trained judge was of the opinion that there was a breach of the provision, but the two lay judges did not agree with this.*

*The High Court found that the accused had breached the provision, but found her innocent on the basis of her ignorance of the existence of this particular provision governing discrimination in the provision of goods and services.*

*The Supreme Court found her innocent and ruled that Para does, not cover any activity that merely forwards the client's request to discriminate. 349A. Furthermore, the court ruled that discrimination cases that do not involve an agent fall outside of Penal Code Para 349A.*

This is the first case in 29 years where someone has been prosecuted for an alleged breach of Penal Code Para 349A.

The Centre is of the opinion that one must look at the consequences this ruling will have in work against ethnic discrimination.

We believe that the Supreme Court has given a very negative signal, both to the discriminating party and to the victim. The judgement says that agents are free to discriminate in the housing market as long as this discrimination has been authorised by their client. This is most unfortunate.

## Challenges –

### The way forward

The Centre has received few enquiries regarding discrimination in the housing market. There are, however, many indications that there is widespread discrimination in the housing market. As mentioned in the introduction, a significant proportion of immigrants and refugees believe they have been discriminated against in the housing market.

Theoretically, there are many provisions, which can be used to combat discrimination. This is rarely the case in practice. The Supreme Court ruling on agents sends out a negative signal and is a loud cry for changes to existing provisions.

It is difficult for an individual alone to uncover discrimination in the housing market. It is only after the experiences of many over a significant period of time that discriminatory tendencies become clear. We must therefore contact other partners in the housing market and start co-operating in order to chart the incidences of discrimination.

The Centre will follow up every effort to combat discrimination in the housing market during 2000.

The judgement can also have a profound effect in other areas, e.g. in employment agencies and other agency services. Is this a situation that the authorities intended to create?

## Chapter 7:

### Discrimination in NightLife /Hospitality

**Most would agree that discrimination in the job and housing markets affects an individual's ability to participate in society and is a huge obstacle in the way of integration. Discrimination in night life/hospitality is often the first type of discrimination that young people experience – before trying to find an apartment or a job. This is overt discrimination, which often happens face to face and is difficult for victims to explain away. A stigma can also be attached because the victim may be required to step aside whilst others in the group are admitted to the venue in question.**

Discrimination in housing can be partially explained by the over-heated property market; discrimination in the job market can be partially explained by high unemployment. However, when one is discriminated against in night life/hospitality it is crystal clear that the only reason is because they are not wanted in the social arena in question.

Such exclusion at an early age, can often lead to undesirable consequences, e.g. ghetto-ization.

When one has been refused entry to certain venues in the past, they will decide to go out to places where they know they will gain admission. This problem must be taken seriously.

### **The Legal Position**

Penal Code Para. 349A forbids discrimination in the provision of goods and services. I.e. admission to pubs, clubs, cafes, restaurants, etc. on the basis of skin colour, beliefs or ethnic origin. The fact that this provision is ineffective in discouraging such discrimination means that there is no alternative way to ensure that perpetrators are punished.

The only relevant civil law provisions are the Alcohol Act and the Serving Act. Neither of these provide any real protection against discrimination.

Discrimination in nightlife/hospitality is a typical example of discrimination not resulting in financial loss. Most people who have been refused admission to a venue soon find another place where there is no problem getting admitted. Over the last 15 years significant media attention has been paid to this form of discrimination. The media also confirm that the police routinely fail to charge perpetrators in such cases. This is despite the fact that undercover newspaper and television journalists, and MPs have followed ethnic minority persons to venues, observed the discrimination first hand, and have given details of such incidents to the police. Over the years, the police have given the impression that it does not help to report such cases.

Up to September 1999 the Centre had only received a few cases involving night life/hospitality discrimination. On 20 September the Ali Baba Campaign was launched in order to collect information on the nature and extent of hospitality discrimination. The post card campaign was run in some major towns in Norway, like Oslo, Bergen, Trondheim, Stavanger, Tromsø and Kristiansand. Free postcards were placed in public places. A questionnaire asking about experiences of discrimination appeared on the back of these postcards that were to be returned to the Centre once completed. The campaign was also run on the Internet. The questionnaire appears on [www.smed.no](http://www.smed.no) where it can be filled out and sent to us electronically. The results of the campaign will be published in a special report in early 2000.

## **An example of discrimination in night life**

*Case 111/99: C was refused admission to a disco. C and a friend (both of African origin) on attempting to gain entry to a disco at 01.00 were asked by the bouncer to produce student cards. On being unable to do so, they were refused entry. C responded that he was no longer was a student, and besides a student card should not be required for entry to the disco. He had seen many others gain entry without a student card*

*while he was standing outside. He then told the bouncer that he was using the requirement to produce a student card as an excuse for refusing them admission, when the real reason they were refused entry was their ethnic origin. As C began calling the police, he noticed a petrol car in the area. C stopped the car and told the officers what had just happened. The police told him he had three alternatives: 1) to send in a written complaint to the police 2) to send in a written complaint to the venue 3) to find another place to go. C protested that something should have been there and then, but the police officers just drove off.*

*The Centre helped C to send in the complaint. C was refused entry on 25 April. The complaint was delivered 3 days later. C was called in for a police interview on 20 July – i.e. three months after the incident. At this time the police had contacted neither the bouncer nor the venue.*

The above is a good illustration of what many feel is police indifference to discrimination in hospitality. Victims are frequently referred to the police station. It is most regrettable that the police failed to get a statement from the bouncer and the venue at the time of the incident. It is very easy for the bouncer to claim (several days or months later) that C was refused admission on the basis of intoxication, or that C

did not produce ID. Many elements of evidence would have disappeared by the time the police got around to investigating the incident three months later.

The police have dropped several cases over the years on the basis of insufficient evidence. It is therefore very difficult to explain why they refused to collect any statements or other evidence at the time of the incident.

Senior levels of the police have reiterated their commitment to prioritise such cases. There are some areas where the police operate patrols to monitor venues for such discrimination. This has still not resulted in anyone being charged or convicted.

## Challenges – The way forward 7

There has never been a conviction on the basis of discrimination in night life/hospitality. This is despite information gathered by several organisations and reported to the police over the last 10 – 15 years.

Penal Code Para 349a provides no protection for victims of such discrimination, contrary to the intention of parliament. The provision demands that those found in breach of it should be punished. In practice the victims of such discrimination witness that venues which breach the law are never charged, never brought to trial and never punished.

This is not just a problem for the individual victim concerned, but for society as a whole. The fact that the victim will in future avoid the venue

in question in favour of a place where he knows he will be admitted means that the social mix becomes twofold – one that is multicultural, and the other which is mainly white. This does not enable integration and causes frustration and anger.

The Centre received few individual cases of this type of discrimination in its first few months. A campaign was launched, the results will be compiled during the year 2000. Focus should also be placed on the possibility for players in the hospitality industry and the police to take action against this type of discrimination.

## Conclusion

**Improving the position of minorities in Norwegian society requires two parallel initiatives; one connected to integration and the other directed at sanctioning**

**perpetrators of discrimination. Schemes for promoting integration must go hand in hand with activities to combat ethnic discrimination.**

Much emphasis has so far been placed on integration. Schemes for enabling better integration has become more concrete in the last three years and government departments are more engaged in such schemes than ever before.

We have high hopes in the result such activity will have for the ethnic minority population.

In ratifying international conventions and treaties, Norway has accepted responsibility for combating racism and discrimination. Like other European countries, Norway regards the involvement of the legal system in protecting individuals from discrimination as crucial. International organisations stimulate their member states to implement concrete schemes to strengthen the legal position of minorities.

Our mandate defines ethnic discrimination as negative unequal treatment based on beliefs, race, skin colour or national or ethnic origin. On the light of Norway's experience in connection with the Gender Equality Act, which entered into force in 1979, we specify our definition of discrimination on the ground of ethnicity as followed:

*" Unequal treatment of persons based on ethnic origin, religious conviction or skin colour. Unequal treatment also includes treatment, which in fact results in a person of a particular ethnic/national origin, skin colour or religious conviction being put, unreasonably, in a worse position than others."*

## **Our experiences so far**

- This report focuses on immigrants and refugees – often referred to together as "persons with ethnic minority backgrounds" or "minorities". This is not because we think national minorities do not have similar problems, but because the report is based, for the most part, on the casework of the Centre for Combating Ethnic Discrimination so far.
- Our archives contain the experiences of 145 persons who have been discriminated against. The report focuses on their cases and the discrimination that they have experienced.
- The Centre documents the nature and extent of ethnic discrimination. The report does not attempt to represent all the discrimination that is carried out throughout the country.
- Although the total number of cases is relatively few, we are pleased with the work carried out in providing legal assistance to individuals in the fight against discrimination. We attain concrete goals in such legal work.
- The Centre has, since February decided to provide financial assistance in 8 cases that will be tried.
- The Centre has initiated contact with industry players and voluntary organisations on co-operation in the fight against ethnic discrimination.

- A large area of our activity has involved combating discrimination in public bodies and against employees in the public sector.
- The Centre has a responsibility for acting on a national basis, however incidents from Greater Oslo make up the majority of our casework.
- Our experience has highlighted that the current legal framework is inadequate. This report contains several proposals on how to improve certain anti-discrimination legal provisions.

## **The Centre's analysis**

### **There should be a law that provides protection in practice**

Current provisions are ill equipped to effectively protect the individual. There is no general anti-discrimination law in Norway. There are few, fragmented provisions designed to protect against discrimination. There are many forms of discrimination, which are not illegal, because they fall outside of the ambit of laws currently in effect. Anti-discrimination legislation is therefore also incomplete.

Today's legal framework does not contain effective sanctions. In other areas, the ability to bring an action and have the offending conduct sanctioned is granted by civil law provisions. E.g. Gender Equality Act, Workers Environment Act, etc. These laws contain civil law sanctions and enforcement is the responsibility of institutions other than the police and prosecution authorities

### **Fair treatment of minorities in employment**

The largest category of cases brought to the Centre concerns discrimination in employment. Such cases make up 34 of the 145 applications for legal assistance. The cases concern failure to select or promote harassment in the workplace, and poor working conditions. The Centre conducts legal casework in an effort to help individuals as well as directs attention to situations regarded as discriminatory in the workplace.

### **The need for dialog with the Police**

The second largest category of cases relates to the relationship between the police and minorities (representing 30 of the 145 legal aid cases). The Centre has experience of the police becoming defensive when confronted with reports of discrimination within its ranks. We have begun work on examining the procedures adopted in such cases in various police departments. We have come up with many challenges involving the way the police performs its duty and its function as prosecution authority and would like to establish dialogue on this basis.

### **The situation concerning the children**

The Centre has given assistance in six cases where the Child Welfare Services was involved. It is obviously not discriminatory in itself that the Child Welfare Services

becomes involved in the affairs of ethnic minorities, but individual cases have given the Centre the impression that the Child Welfare Services demands more of minorities than of ethnic Norwegians.

### **Discrimination in the housing market**

We are well aware that immigrants – especially refugees – encounter difficulties in finding housing. The Centre has so far received few enquiries regarding discrimination in the housing market. There are, nevertheless, many survey results documenting widespread discrimination. On this basis, the Centre has begun co-operating with several players in the housing market and other voluntary anti-discrimination organisations.

A committee is currently working on proposals for changes to Housing legislation. The committee report was due to be published at the end of 1999. The Centre has made representations to the committee regarding discrimination in the housing market, and made proposals for changes to the law to ensure better protection against discrimination.

### **Gaining entry to establishments**

The Centre has not received many enquiries from individuals regarding night life/hospitality discrimination the first months of operation. We are aware, on the basis of documentation from organisations and the media over the past five 10 – 15 years, that such discrimination is widespread.

There has never been a conviction based on such discrimination. Individuals who have been discriminated against are afforded no protection by Penal Code para. 349 A, as was intended by parliament. The provision demands that those found in breach of it should be punished. In practice the victims of such discrimination witness that venues which breach the law are never charged, never brought to trial and never punished. The Centre began a campaign in September 1999 aimed at improving the documentary evidence such discrimination. The results will be published during the year 2000. This will summarise the situation, recommend changes and means of bringing about such change.

### **Religion in schools**

Reports reaching us regarding religion in schools suggest that some religious minorities are discriminated against on the basis of their religion. This is especially the case with the teaching of Christian Knowledge and religious and Ethical education in schools. Proper information and co-operation with parents is the key to making the teaching of the subject less problematic for all concerned. We have experienced that there the approach to this varies widely from school to school.

**The Centre for Combating Ethnic Discrimination is primarily engaged in finding legal solutions to discrimination cases. It is also vital to find solutions outside of the technical legal definition. In order to resolve issues, one must confront the**

**situation by asking difficult questions, and challenging actions that are second nature to one party whilst regarded by another as discriminatory. The combined effect of both of these will ensure protection for individuals who have been the subject of discrimination.**

**This report is not exhaustive. Our operations have also covered some areas not specially mentioned. We have also begun looking into other problem areas that we will be in a better position to comment on in the future. We continue in our documentation exercises, inn combating and challenging discrimination in Norway.**